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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,702	08/05/2003	Kimberly A. Campana	29939/38771	7556
4743	7590	02/03/2006		
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606		EXAMINER GELLNER, JEFFREY L		
		ART UNIT 3643		PAPER NUMBER

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/634,702	CAMPANA, KIMBERLY A.
	Examiner	Art Unit
	Jeffrey L. Gellner	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 November 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,4-8,10-30,32,33,35-37,39,40,42 and 43 is/are pending in the application.  
 4a) Of the above claim(s) 10-29 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,4,5,7,8,30,32,33,35-37,39,40,42 and 43 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC §103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 37, 39, and 40 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971).

As to Claims 1 and 37, Fredrickson et al. discloses a lawn edging (Figs. 1-3) comprising a hollow (see Fig. 2) middle or end block (11 of Figs. 1-3), each of the hollow middle or end block being free of openings or passages except for a single pressure equalization hole (region where element 12 enters the block - see Figs. 1 and 2); a hinge (22 of Figs. 1-3), each plastic hinge being free of metal; and the block including an upper and lower portions (top and bottom of 11 in Figs. 1-3), the upper portion including a front face (a face on 18 of Figs. 1-3) comprising a rough, three-dimensional simulated rock texture ("Moonstone" of col. 1 lines 40-44), each lower portion being tapered (from Fig. 3 in that the lower portion tapers out) and including two edges that extend inwardly towards each other as they extend downward from the upper portion ("edges" are portions of 13 in Figs. 1 and 2 that are where leadline of 13 ends), the lower portion further including a front face and a rear face ("face" is portion of 13 between "edges" in Figs. 1 and 2) that extends towards each other as they extend downward from the upper portion. Not disclosed is a plurality of middle blocks and two end blocks and the hinge being a living hinge

that connects the blocks. Boeve, however, discloses an edging with a plurality of blocks (shown, for example, in Figs. 2, 3, 8) connected by a living hinge (3 of Fig. 8; Figs. 9a-9d; col. 4 lines 31-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Fredrickson et al. by having a plurality of blocks connected by a living hinge as disclosed by Boeve so as to allow the edging surround any shaped walkway or garden and to have displacement in the horizontal direction and a relatively wide angular displacement (col. 4 lines 31-39).

As to Claims 4 and 39, the limitations of Claims 1 and 37 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that “if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” Here, the Applicant’s edging is anticipated by Fredrickson et al. as modified by Boeve. The process by which the edging is made is not patentably distinct.

As to Claims 5 and 40, Fredrickson et al. as modified by Boeve further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Boeve at col. 4 lines 31-39).

Claim 2, 30, 32, and 33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971) in further view of Clark Jr. (US 6,138,406).

As to claim 2, the limitations of claim 1 are disclosed and described above. Not disclosed are either of the faces including a barb. Clark Jr., however, discloses an edging with faces with barbs (42 of Fig. 1; col. 1 lines 60-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve by including barbed ribs on the faces as disclosed by Clark Jr. so as to provide a removal resistance means (Clark Jr. at col. 1 lines 60-68) so that the edging stays in place.

As to Claim 30, Fredrickson et al. discloses a lawn edging (Figs. 1-3) comprising a plurality of plastic hollow (see Fig. 2) middle or end block (11 of Figs. 1-3), each of the hollow middle or end block being free of openings or passages except for a single pressure equalization hole (region where element 12 enters the block - see Figs. 1 and 2); a plastic hinge (22 of Figs. 1-3), each plastic hinge being free of metal; each middle and end block including an upper and lower portions (top and bottom of 11 in Figs. 1-3), the upper portion including a front face (a face on 18 of Figs. 1-3) comprising a rough, three-dimensional simulated rock texture (“Moonstone” of col. 1 lines 40-44), each lower portion being tapered (from Fig. 3 in that the lower portion tapers out) and including two edges that extend inwardly towards each other as they extend downward from the upper portion (“edges” are portions of 13 in Figs. 1 and 2 that are where leadline of 13 ends), the lower portion further including a front face and a rear face (“face” is portion of 13 between “edges” in Figs. 1 and 2) that extends towards each other as they

extend downward from the upper portion. Not disclosed is a plurality of middle blocks and two end blocks the plastic living hinge connecting the blocks; and, at least one of the faces including a barbed rib. Boeve, however, discloses an edging with a plurality of blocks (shown, for example, in Figs. 2, 3, 8) connected by a living hinge (3 of Fig. 8; Figs. 9a-9d; col. 4 lines 31-39); and, Clark Jr. discloses an edging with faces with barbs (42 of Fig. 1; col. 1 lines 60-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Fredrickson et al. by having a plurality of blocks connected by a living hinge as disclosed by Boeve so as to allow the edging surround any shaped walkway or garden; and, to include barbed ribs on at least one face as disclosed by Clark Jr. so as to provide a removal resistance means (Clark Jr. at col. 1 lines 60-68) so that the edging stays in place..

As to Claim 32, the limitations of Claim 30 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve and Clark Jr. by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that “if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” Here, the Applicant’s edging is anticipated by Fredrickson et al. as modified by Boeve and Clark Jr. The process by which the edging is made is not patentably distinct.

As to Claim 33, Fredrickson et al. as modified by Boeve and Clark Jr. further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Boeve at col. 4 lines 31-39).

Claims 7, 8, 42, and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971) in further view of Kono (JP2000-300071).

As to claims 7, 8, 42, and 43, the limitations of Claims 1 and 40 are disclosed as described above. Not disclosed are the blocks made of two or more plastic materials. Kono, however, discloses the blocks made of two or more plastic materials (“flexible synthetic resins” of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve by using several plastics and polyethylene as disclosed by Kono depending upon availability of material.

Claims 35 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971) and Clark Jr. (US 6,138,406) in further view of Kono (JP2000-300071).

As to claims 36 and 36, the limitations of Claim 33 are disclosed as described above. Not disclosed are the blocks made of two or more plastic materials. Kono, however, discloses the blocks made of two or more plastic materials (“flexible synthetic resins” of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono). It would

have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve and Clark Jr. by using several plastics and polyethylene as disclosed by Kono depending upon availability of material.

*Response to Arguments*

Applicant's arguments with respect to the non-withdrawn and non-cancelled claim have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JEFFREY L. GELLNER  
PRIMARY EXAMINER

Jeffrey L. Gellner